

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISAIAH THOMAS WILLOUGHBY,

Plaintiff,

v.

MEYER, *et al.*,

Defendants.

Case No. C21-213-BJR-MLP

ORDER DIRECTING SERVICE OF
CIVIL RIGHTS COMPLAINT BY
CERTIFIED MAIL

This is a civil rights action brought pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Plaintiff asserts in his amended complaint that his constitutional rights were violated when he was placed in segregated housing and denied hot meals at the Federal Detention Center in SeaTac, Washington. On June 4, 2021, this Court issued an Order directing that Plaintiff's amended civil rights complaint be served on Defendants, and that Defendants respond thereto. (*See* dkt. # 11.) On August 16, 2021, due to uncertainty over whether the service materials had been sent as ordered, the Court again directed the Clerk to effectuate service. (*See* dkt. # 12.) As of October 6, 2021, no response has been received from any Defendant.

1 In order to ensure service has been properly effectuated under Federal Rule of Civil
2 Procedure 4(i), the Court hereby ORDERS:

3 (1) Service by Clerk

4 The Clerk is directed to send the following to the named Defendant(s) by certified mail,
5 return receipt requested: a copy of Plaintiff's complaint, a copy of this Order, two copies of the
6 notice of lawsuit and request for waiver of service of summons, a waiver of service of summons,
7 and a return envelope, postage prepaid, addressed to the Clerk's Office.

8 Pursuant to Rule 4(i) of the Federal Rules of Civil Procedure, the Clerk shall also send
9 copies of the aforementioned documents to the Attorney General of the United States at
10 Washington, D.C., and to the civil process clerk at the Office of the United States Attorney for
11 this district, by certified mail, return receipt requested.

12 (2) Response Required

13 Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of
14 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**
15 **days** after the date designated on the notice of lawsuit to file and serve an answer to the
16 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

17 A defendant who fails to timely return the signed waiver will be personally served with a
18 summons and complaint, and may be required to pay the full costs of such service, pursuant to
19 Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally
20 served shall file an answer or motion permitted under Rule 12 within **twenty-one (21) days** after
21 service.
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1 (3) Filing and Service by Parties, Generally

2 All attorneys admitted to practice before this Court are required to file documents
3 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
4 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
5 All non-attorneys, such as *pro se* parties and/or prisoners, may continue to file a paper original
6 with the Clerk. All filings, whether filed electronically or in traditional paper format, must
7 indicate in the upper right-hand corner the name of the magistrate judge to whom the document
8 is directed.

9 For any party filing electronically, when the total of all pages of a filing exceeds fifty
10 (50) pages in length, a paper copy of the document (with tabs or other organizing aids as
11 necessary) shall be delivered to the Clerk's Office for chambers. The chambers copy must be
12 clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers."

13 Any document filed with the Court must be accompanied by proof that it has been served
14 upon all parties that have entered a notice of appearance in the underlying matter.

15 (4) Motions, Generally

16 Any request for court action shall be set forth in a motion, properly filed and served.
17 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
18 part of the motion itself and not in a separate document. The motion shall include in its caption
19 (immediately below the title of the motion) a designation of the date the motion is to be noted for
20 consideration upon the Court's motion calendar.

21 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
22 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
23 motions for default, requests for the clerk to enter default judgment, and motions for the court to

1 enter default judgment where the opposing party has not appeared shall be noted for
2 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions shall
3 be noted for consideration no earlier than the third Friday following filing and service of the
4 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier than
5 the fourth Friday following filing and service of the motion. *Id.*

6 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
7 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
8 immediately preceding the date designated for consideration of the motion. If a party (*i.e.*, a *pro*
9 *se* litigant and/or prisoner) files a paper original, that opposition must be received in the Clerk's
10 office by 4:30 p.m. on the Monday preceding the date of consideration.

11 The party making the motion may file and serve, not later than 11:59 p.m. (if filing
12 electronically) or 4:30 p.m. (if filing a paper original with the Clerk's office) on the date
13 designated for consideration of the motion, a reply to the opposing party's briefs and affidavits.

14 (5) Motions to Dismiss and Motions for Summary Judgment

15 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
16 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
17 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
18 noted for consideration no earlier than the fourth Friday following filing and service of the
19 motion.

20 Defendants filing motions to dismiss or motions for summary judgment are advised that they
21 MUST serve *Rand* and *Wyatt* notices concurrently with motions to dismiss and motions for
22 summary judgment so that *pro se* prisoner plaintiffs will have fair, timely and adequate notice of
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what is required of them in order to oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit has set forth model language for such notices:

A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact – that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, **you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant’s declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.**

Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added); *see Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003) (extending the fair notice requirement to motions to dismiss for failure to exhaust administrative remedies).

Defendants who fail to file and serve the required *Rand* and *Wyatt* notices on Plaintiff may have their motion stricken from the Court’s calendar with leave to re-file.

(6) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(7) The Clerk is directed to send copies of this Order and of the Court’s *pro se* instruction sheet to Plaintiff. The Clerk is further directed to send a copy of this Order and a

1 courtesy copy of Plaintiff's complaint to the Office of the United States Attorney for this district,
2 by first class mail.

3 Dated this 19th day of October, 2021.

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5 MICHELLE L. PETERSON
6 United States Magistrate Judge
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